Supreme Court of the United States

OCTOBER TERM, 1942.

No. 454.

PEDRO AGUILAR,

Petitioner,

against

STANDARD OIL COMPANY OF NEW JERSEY,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR STANDARD OIL COMPANY OF NEW JERSEY, RESPONDENT.

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STATEMENT.

The petitioner was a seaman attached to the Steamship *E. M. Clark* owned by the respondent. While he was ashore on his own personal business, he was struck by an automobile and injured. The accident took place at the plant of a petroleum company which respondent neither owned, operated nor controlled. Respondent did not own, operate or control the automobile which struck the petitioner. Petitioner was returning to the vessel and was about a half mile from it when the accident occurred.

The District Court dismissed the suit at a pre-trial hearing (Record, pages 10-11). 1940 A. M. C. 1577, not otherwise reported.

The petitioner appealed to the Circuit Court of Appeals which affirmed the judgment below. 130 F. (2d) 154.

On November 16, 1942, an order was entered by this court denying certiorari but this order was vacated and certiorari granted on January 4, 1943. At the same time, in *Waterman Steamship Corporation* v. *Jones*, No. 582, certiorari was granted from a decision of the Third Circuit which allowed a seaman maintenance for injuries sustained while ashore on his own business. The decision in the Circuit Court in the *Jones* case is found in 130 F. 2nd 797.

The gist of the decision of the Second Circuit in the *Aguilar* case, denying petitioner maintenance on account of injuries sustained ashore while there for personal business, was as follows (Record, page 20):

> "* * * with the doubtful exception of *Hogan* v. *J. M. Danziger* (1938), Amer. Mar. Cas. 685, we have found no case holding that the right extends to such injuries, and a number of cases hold that it does not. *Collins* v. *Dollar S. S. Lines*, 23 Fed. Suppl. 395; *The President Coolidge*, 23 Fed. Suppl. 575; *Smith* v. *American South African Line*, 37 Fed. Suppl. 262; *Lilly* v. *United States Lines Co.*, 42 Fed. Suppl. 214; *Wahlgren* v. *Standard Oil Company* (1941), Amer. Mar. Cas. 1788.
>
> "The argument that as soon as the plaintiff had finished his business and started back to the ship, he went again into her service is untenable; the occasion for his return was the same as that for his leaving; i. e., his attention to his own business, not the ship's. *Hennessy* v. *M. & J. Tracy, Inc.*, 295 Fed. Rep. 680 (C. C. A. 4), was quite different; the seaman had to leave the ship after his discharge to be quit of the job. His position was like that of one who sleeps ashore and goes back and forth to work upon a harbor vessel; it is part of the business that he shall leave the ship at night and come back in the morning. *The Bouker No. 2*, 241 Fed. Rep. 831 (C. C. A. 2)."

This decision was apparently not before the Third Circuit when it decided the *Jones* case. No reference was made to it. The decision allowing maintenance to Jones was placed upon the very narrow ground that Jones was near his ship when the accident happened. The ancient precepts and the broad principles, upon which maintenance and cure is allowed, were not discussed. Indeed, the court refused to express any opinion on a case having facts similar to those in the *Aguilar* case.

Because no new brief will be submitted by petitioner, it will be necessary for the respondent to consider his points as they appear in his application for certiorari.

The Issue.

The sole issue before the court is whether a seaman who was injured when he was one-half a mile away from his ship, while ashore on his own personal business, can impose upon his employer the cost of his maintenance and cure.

POINT I.

IT IS THE ANCIENT AND UNIVERSAL RULE THAT A SEAMAN INJURED ASHORE, WHILE THERE FOR PERSONAL BUSINESS, MAY NOT RECOVER FROM THE SHIPOWNER THE COST OF HIS MAINTENANCE AND CURE.

Early American cases have accepted the ancient codes and have founded the American doctrine of maintenance and cure on them. This court has accepted them. *The Osceola*, 189 U. S. 158. More recently, they have been recognized and applied in *O'Donnell* v. *Great Lakes Dredge and Dock Company*, No. 320, ... U. S. .....; *Barlow* v. *Pan*

Atlantic S. S. Corporation et al. (C. C. A. 2), 101 F. (2d) 697 and *The Berwindglen* (C. C. A. 1), 88 F. (2d) 125.

All of these codes limit the shipowner's obligation to pay maintenance and cure to cases in which the injury or illness was suffered in the service of the ship, meaning while on the ship, or ashore on ship's business.

The Laws of Oleron, Article VI (30 Fed. Cas. p. 1174).

The Laws of Hanse Towns, Article XXXIX (ibid. p. 1200).

The Marine Ordinances of Louis XIV, Title Fourth, Article XI, XII (ibid. p. 1209).

The Laws of Wisbuy, Article XVIII (ibid. p. 1191), which is as follows:

> "A mariner being ashore in the master's or the ship's service, if he should happen to be wounded, he shall be maintained and cured at the charge of the ship: but if he goes ashore on his own head to be merry, and divert himself, or otherwise, and happens to be wounded, the master may turn him off; and the mariner shall be obliged to refund what he has received, and besides to pay what the master shall be forced to pay over and above to another whom he shall hire in his place."

Several versions of the Laws of Oleron appear in Twiss' The Black Book of Admiralty (Chronicles and Memorials of Great Britain and Ireland During the Middle Ages), In Volume 2 page 217, Article VI reads:

> "Mariners hire themselves to their master, and there are some of them who go out [of the ship] without leave of the master, and get drunk, and make quarrels, and some of them are hurt, the master is not liable to make them be healed nor to provide them with anything, but he may well put them out [of the ship] and hire others in their place or in his place,

> and if it costs more, the mariner ought to pay, if the master finds anything of his own, but if the master has sent him on any service of the ship by his order, and he wounds or hurts himself, he ought to be healed at the cost of the ship and be provided for. This is the judgment in such case."

In another version, Volume 1, Page 95, the last phrase reads:

> "* * * but if the master send them in any errand for the profit of the ship, and that they should hurt them, or that any did grieve them, they ought to be healed at the cost of the ship. This is the judgment."

The use of this phrase makes it clear that the ship bore the seaman's maintenance and cure due to be a shore accident only when he was there by the master's orders and on "any service of the ship". According to the second version "service of the ship" means "for the profit of the ship".

The foregoing rules have been invoked to deny seamen recovery for the cost of maintenance and cure where their injury was due to intoxication, *The Berwindglen, supra, Barlow* case, *supra, Lortie* v. *American-Hawaiian Steamship Company* (C. C. A. 9), 78 F. (2d) 819; venereal disease or gross acts of indiscretion, *The Alector*, 263 Fed. 1007, *Chandler* v. *The Annie Buckman*, 5 Fed. Cas. 449 (Case No. 2,591a), *Zambrano* v. *Moore-McCormack Lines Inc.* (C. C. A. 2), 131 F. 2d 537; a personal fight, *Lortie* v. *American Hawaiian Steamship Company, supra; Brock* v. *Standard Oil Company of New Jersey*, 33 F. Supp. 353; horseplay on board ship, *Meyer* v. *Dollar Steamship Line*, 49 F. (2d) 1002; playing baseball ashore, *Collins* v. *Dollar Steamship Lines, Inc. Limited*, 23 F. Supp. 395; willful misconduct, *Oliver* v. *Calmar S. S. Co.*, 33 F. Supp. 356; a motorcycle accident

while returning from shore leave, *Smith* v. *American South African Line, Inc.*, 37 F. Supp. 262; riding in a truck away from the ship on personal business, *Wahlgren* v. *Standard Oil Company of New Jersey*, 1941 A. M. C. 1788; a fall off a dock to which his ship was moored during a blackout, after he returned from shore leave, *Lilly* v. *United States Lines Company*, 42 F. Supp. 214 and finally, in pursuit of a personal matter, *The President Coolidge*, 23 F. Supp. 575.

The codes expressly provide that the burden of a seamen's maintenance for injuries received while on personal business ashore are on him and not the shipowner. The cases follow the codes.

Therefore the question of what constitutes "service of the ship" or "call of duty" is really not relevant in the present inquiry. Admittedly (Record, p. 10) petitioner was ashore for his own pleasure when he was hurt. He is squarely within the rule which puts maintenance expenses on him. To say that he was in the "service of his ship" at the time is to disregard the meaning of the words.

Petitioner here and Jones in the companion case have sought to extend the right to maintenance to situations where maintenance has never been allowed. Actually they seek a change in the law by judicial precept. One of the devices used by them is to assert that the right to maintenance is co-extensive with the term of the contract. No case has ever said so. Adoption of such a rule would settle all the problems. There would then be no need to consider whether the injury was received in the "service of the ship". Any personal act, even drinking in a saloon, would be "for the profit of the ship". This doctrine is unjust. It makes the shipowner liable for injuries regardless of where or how they occur, which he not only cannot provide against but he cannot even anticipate. Moreover, he has

no means of ascertaining the legitimacy of claims arising under such circumstances.

It is next said that an artificial meaning should be given to the expression "service of the ship" so that it will depend only upon what is in the seaman's mind. Thus if he is going from the ship and has in mind coming back, his going away is in the "service of the ship". If he says that at the moment of his accident he had in his mind returning to the ship, he is in the "service of the ship" and the cost of maintenance should be on the shipowner.

No authority is submitted to support either of these contentions. The case of *Reed* v. *Canfield*, 20 Fed. Cas. 426 (Case No. 11,641) is cited by petitioner as authority for his erroneous position.

However petitioner overlooks the fact that the seaman, in that case, was in the performance of service to his ship at the time the injury occurred. Previously, the seaman, pursuant to orders, had rowed the ship's mates from the vessel's anchorage to shore, in the ship's rowboat. The injury occurred when he and fellow seamen were rowing the boat back to their ship. The issue was whether the shipowner had the burden of the seaman's maintenance and cure when the misfortune befell the seaman at a "home port". The contention which the petitioner makes here, viz.: that maintenance is payable when the injury occurs while ashore for personal business, was not even mentioned.

However, the language of Judge Story bears upon the issues in the present case. He said at page 428:

> "• • •. Lord Tenterden, in his excellent treatise on Shipping, lays it down generally, 'that by the ancient marine ordinances, if a mariner falls sick during the voyage, or is hurt in the performance of his duty, he is to be cured at the expense of the ship; *but not, if he receives an injury in the pursuit of his*

own private concerns.' And he is fully borne out in this statement by the language of the ordinances cited by him on this occasion. * * *." (Italics ours.)

It should be noted that the Circuit Court in the *Jones* case, *supra,* page 799, has misinterpreted the facts in the *Reed* case. The seaman was not ashore for pleasure, did not overstay his time but was in fact, when injured, performing a duty imposed upon him by his ship's officers.

The test of whether or not a seaman is in the service of a ship was carefully discussed in the *Meyer* case, *supra,* where the injury was due to "horseplay" on the ship. The court said, page 1003:

> "The phrase 'in the service of the ship,' as applied to ordinary seamen, is closely analogous to the phrase 'in the line of duty,' as applied to soldiers or sailors in the service of the United States. The differences in the status of an ordinary seaman, for example, and that of a sailor are obvious at once, but there is a similarity in the narrow employer-employee relationship in both cases.
>
> "'Line of duty' is defined as follows: 'A person in the active service and submitting to its rules and regulations is, in general, in the line of duty.' Naval Courts and Boards, chapter XII, §1022.
>
> "An injury suffered or a disease contracted by a sailor is considered to have been 'in the line of duty' 'unless it is actually caused by something for which he is responsible which intervenes between his service or performance of duty and the injury or disease. He will be responsible for an intervening cause if (1) it consists of his own wilful misconduct, or (2) it is something which he is doing in pursuance of some private avocation or business, or (3) it is something which grows out of relations unconnected with the service or is not the logical incident of provable effect of duty in the service.' *Ibid.*"

The petitioner does not mention *Angco et al.* v. *Standard Oil Company of California* (C. C. A. 9), 66 F. (2d) 929, which he was unable to successfully distinguish below. The court there describes the status of a seaman on shore leave as follows, page 930:

> "When Warner left the ship at Kahului he was off duty, upon pleasure bound, and was beyond the scope of his employment. Unless some unforeseen emergency arose he would not again come within the scope of his employment until he returned to the vessel. He was under no instructions to perform any service in any way connected with his employment; his sole responsibility, to return to his ship before she sailed, was a personal one. * * *"

In the *Collins* case, *supra*, the seaman was injured ashore. The Court, after stating that the doctrine of charging the shipowner with a seaman's maintenance and cure should be liberally applied, said, at page 397:

> "* * *. It is reasonable and logical to say that if injured in the ship's service the seaman shall be cared for by the ship. To extend the obligation of the ship beyond this so as to require it to provide maintenance and cure for one who was injured on shore while engaged in his personal affairs would be to place an unfair burden upon the ship and would relieve the seaman of the risk that he himself should properly assume. I find no authority which would justify recovery of maintenance and cure by the libelant."

The petitioner seeks to avoid the effect of these adverse decisions in two ways. First, he refers to the scene of the accident, which was a half a mile away from the vessel, as a "means of ingress" to the ship (Petition, p. 3). He says

that when the seaman started home, he passed on to the "means of ingress to his ship" (Brief, p. 13).

He also adopts a phrase from a workmen's compensation case involving a longshoreman, whom he calls a seaman, to imply that it has some application in the case at bar (Brief, page 10). *T. J. Moss Tie Co. et al.* vs. *Tanner et al.*, 44 F. 2d 928. The phrase is "the route of immediate ingress and egress". The petitioner says that an immediate ingress and egress may cover "extensive distance".

However, the blunt fact is that the petitioner was a half a mile away from the ship when he was injured and that fact cannot be changed by referring to it as "a means of access" or as a "route of immediate ingress and egress."

The second device which the petitioner uses to escape the weight of authority against him is to erroneously assert that the ancient case of *Reed* v. *Canfield, supra,* involved an injury to a seaman who had gone ashore for pleasure and has been squarely reversed by the decision of the Circuit Court of Appeals in thi case.

The fact was that in *Reed* v. *Canfield, supra,* the libelant, when injured, was actually engaged in carrying out orders issued to him by the mates. He was in the ship's rowboat on the way back to his vessel. He had gone ashore by order of the mates for express purpose of rowing the mates ashore. The petitioner is in error when he states that libelant had "overstayed his allotted time". The specific finding by the lower court, which was not disturbed on appeal, was that the libelant had not overstayed his leave. *Canfield* v. *Reed*, 5 Fed. Cas. 9 (Case No. 2,384) at page 10. The opinions in both courts not only do not support the petitioner's statements but there is nothing in them which in any way impairs the ancient and modern authority which denies maintenance and cure to a seaman who is injured while on shore on his own personal business.

Petitioner argues that his accident should be considered as having occurred "in the service of the ship" because an accident in similar circumstances to a shore worker would have been within state compensation laws. There, the test is whether the accident "arose out of and in the course of the employment". He says (Brief, page 10), that there are three cases involving seamen where the maritime law of maintenance and cure was held to be based on the same rule as modern compensation laws. Of the three cases cited, two involved injuries which occurred to the seamen while actually aboard vessels, *Hennessey* v. *M. & J. Tracy, Inc.*, 295 Fed. 680 and *Wong Bar* v. *Suburban Petroleum Transport Inc.*, 119 F. 2d 745. The third case, *T. J. Moss Tie Co. et al.* v. *Tanner, et al.*, 44 F. 2d 928 did not involve a seaman, but a longshoreman, who was riding on a sling suspended from a boom of a ship. His injury was held to "arise out of and in the course of his employment" under the applicable compensation act.

There is nothing in these cases which supports the petitioner in his statement that the courts have held that the phrase "in the service of the ship" as applied to seamen has the same meaning as the phrase "arising out of and in the course of his employment" as applied to a shore worker.

Workmen's compensation rights furnish no analogy to maintenance and cure. The two spring from entirely different sources. Workmen's compensation is statutory and gives an injured employee part of his wages and prompt medical attention without regard to whether negligence was a causative factor in the accident. On the one hand, it requires the employer to pay a portion of the wages for temporary disability, scheduled amounts for permanent disability and provide the medical attention and, on the other hand, deprives the employee of the right to sue his employer for indemnity. There was a compromise of the rights

of the parties but with favor to the employee. This was just and intended to put upon the industry the cost of injury to the employees therein. To carry out the beneficial purposes of the law, it was generously interpreted to extend to situations beyond the actual course and place of work. The cases cited by the petitioner in his brief are such cases.

Such cases have nothing in common with maintenance and cure, which has a historical background of entirely different implication. As the Circuit Court observed (Record, pp. 19-20):

> "* * *. A distinction based upon the same activities of the seaman ashore and on board ship is perhaps *a priori* not very reasonable; but it has from ancient times been true that what takes place on the ship may have different legal consequences from the same events on the land. Besides, the risks of even amusement on board ship are more contracted than those on land; and as to a seaman's private business, it can scarcely be said to be part of the ship's service in any sense. * * *".

One of the results of the historical background of maintenance and cure is that a seaman's right to indemnity for negligence is not restricted. This was so even before the Jones Act (46 U. S. C. 688). On the other hand, the social purpose behind modern compensation acts requires such restriction.

The Circuit Court referred to this preferred status of seamen as follows (Record, page 18):

> "The outlines of the seaman's right to maintenance and cure have remained fairly constant from very ancient times; until Congress sees fit to change its incidents, the court should enforce it as it is; it has already been generously supplemented by the Jones Act (688, Title 46, U. S. Code)."

Accordingly, Workmen's Compensation is allowed wherever the accident arises out of and in the course of the employment, but maintenance and cure is limited to cases where the injury or illness arose "in the service of the ship". A seaman who is ashore for his own pleasure is not "in the service of the vessel" nor is he "subject to the call of duty". Even were this the case where the broad rule of Workmen's Compensation was applicable, viz.: "arising out of and in the course of his employment", this injury would not come within such a rule. Here, there was no necessity for the seaman to go ashore. He had his home aboard the vessel.

As the Circuit Court of Appeals pointed out, there is a distinction between those cases where an employee is required to sleep ashore and the cases where he sleeps on and makes his home aboard his vessel. If it could be said that a seaman who is required to sleep ashore is still engaged upon his employment while he is going back and forth, there is no justification for a similar statement concerning an employee who is provided with sleeping accommodations aboard the vessel. His employer has no interest whatever in his going back and forth to shore upon personal errands of pleasure.

It may be argued that the instant case is affected by Article II of the Shipowners' Liability Convention of 1936, 54 Stat., page 1695, effective October 29, 1939. The convention could not control this case because Aguilar's accident happened on April 18, 1938, more than a year before the convention became effective.

Furthermore, the convention is not operative because there has never been any legislation to implement it. This is necessary. *Choy* v. *Pan American Airways Company* (U. S. D. C. S. D. N. Y.) 1941 A. M. C. 483 (not otherwise reported). That case concerned a similar convention, the

Warsaw Convention of 1928. The Court denied that it had any application because of the lack of supporting legislation.

Legislation was passed by the House of Representatives on July 31, 1939, to give effect to the Shipowners' Liability Convention. The bill was known as H. R. 6881, An Act to Implement the Provisions of the Shipowners' Liability (Sick and Injured Seamen) Convention of 1936. However, the bill was never enacted by the Senate.

It is interesting to note, however, that the bill (Sec. 4) exempted the shipowner from liability for maintenance on account of sickness and injury "incurred otherwise than in the service of the ship".

If it be considered that the convention is operative without implementing legislation, still it does not alter the existing maintenance and cure rules applicable to petitioner's case in force in the United States. This is so because the convention was so worded as to save the existing rules in certain specified cases, of which this case is one (Article 2, Subdivision 2).

Thus the law, as established under the codes and the cases cited above, remains unchanged. This Court seems to have been of a similar opinion, *O'Donnell* v. *Great Lakes Dredge and Dock Company, supra.* When a seaman goes ashore for his own pleasure, he is not in the service of the ship. Such a seaman is not "subject to the call of duty". Indeed, he has deliberately placed himself in a position

where he cannot hear the call of duty and has done it for purposes of his own pleasure. If duty called him, he could not be found.

POINT II.

THE DECISION OF THE CIRCUIT COURT SHOULD BE AFFIRMED.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

Nos. 454, 582.—October Term, 1942.

Pedro Aguilar, Petitioner, vs. Standard Oil Company of New Jersey.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.
Waterman Steamship Corporation, Petitioner, vs. David E. Jones.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[April 19, 1943.]

Mr. Justice Rutledge delivered the opinion of the Court.

The question presented by these cases is whether a shipowner is liable for wages and maintenance and cure to a seaman who, having left his vessel on authorized shore leave, is injured while traversing the only available route between the moored ship and a public street. The injury in No. 582 occurred while the seaman was departing for his leave. That in No. 454 occurred while he was returning.

The complaint in No. 582 discloses that the plaintiff, respondent here, was a messman on the Steamship Beauregard, owned by defendant. On January 16, 1941, the vessel, which apparently was engaged in the coastwise trade between New Orleans and East Coast and Gulf ports, was moored to Pier C, Port Richmond, Philadelphia. At about 6 p. m. plaintiff left the ship on shore leave. As he was proceeding through the pier toward the street all the lights were extinguished. In the ensuing darkness he fell into an open ditch at a railroad siding. This caused injuries which required treatment and prevented him from resuming his usual duties. This action followed, for maintenance and cure and wages. On defendant's motion the District Court dismissed the complaint. The ground assigned was that at the time of his injury plaintiff was not ashore on the ship's business. The Third Circuit Court of Appeals reversed and remanded (130 F. 2d 797), holding that on the facts stated in the complaint defendant was liable for maintenance and cure and wages.

The stipulation of facts in No. 454 discloses that on April 18, 1938, the defendant's vessel, the Steamship E. M. Clark, was lying docked at the premises of the Mexican Petroleum Company, in Carteret, New Jersey, which defendant neither owned, operated nor controlled. Petitioner, a member of the crew, obtained permission from the master and went ashore on his own personal business. In order to reach the vessel on returning from shore leave, he had to pass through the premises of the Mexican Petroleum Company. After he had gone through the entrance gate and while he was walking on the roadway of those premises about a half mile from the ship, he was struck and injured by a motor vehicle which was neither owned, operated nor controlled by the defendant. Petitioner brought this action to recover $10,000, the expense of his maintenance and cure for the injuries so incurred. The District Court dismissed the complaint and on appeal the Second Circuit Court of Appeals affirmed. 130 F. 2d 154. Both courts acted on the ground that in going ashore on personal business the plaintiff left the service of the ship and therefore no liability for maintenance and cure attached.

The cases were brought here to resolve the conflict thus presented on an important question of maritime law.

All admit the shipowner is liable if the injury occurs while the seaman is "in the service of the ship," and the issue is cast in these ambiguous terms, the parties giving different meanings to the ancient phrase.

The claimants say it includes the whole period of service covered by the seaman's articles; and, if he is injured during this time, the right is made out, unless it is shown by way of defense he has forfeited it by misconduct causing the injury. Since the injuries here took place during the period and there was admittedly no misconduct, it is said the claims are established. Corollaries of this view are that recovery is not conditioned on showing the injury was received while the seaman was at work or doing some errand for the employer and that going ashore with leave or returning from it is part of being "in the service of the ship," whether or not it was to perform such an errand.

The shipowners regard the phrase more narrowly. In their view it requires the seaman to be injured, if ashore, while he is "on duty" or at work, doing some task connected with the vessel's business. Going ashore simply for diversion and relief from its routine and discipline or for any matter personal to the seaman

takes him out of the service of the ship; and the departure is made the moment he steps off deck and onto the dock or pier, perhaps as he descends the gangplank or ladder. Cf. *The President Coolidge*, 23 F. Supp. 575 (D. C.). Likewise return is not made until he is on board again. Cf. *Lilly* v. *United States Lines Co.*, 42 F. Supp. 214 (D. C.). In this view it is of no moment whether the injury results from the seaman's fault or misconduct or from causes entirely beyond his control.

It will aid in determining the scope of the liability to consider its origin and nature.

From the earliest times maritime nations have recognized that unique hazards, emphasized by unusual tenure and control, attend the work of seamen. The physical risks created by natural elements and the limitations of human adaptability to work at sea enlarge the narrower and more strictly occupational hazards of sailing and operating vessels. And the restrictions which accompany living aboard ship for long periods at a time combine with the constant shuttling between unfamiliar ports to deprive the seaman of the comforts and opportunities for leisure, essential for living and working,[1] that accompany most land occupations. Furthermore, the seaman's unusual subjection to authority adds the weight of what would be involuntary servitude for others to these extraordinary hazards and limitations of ship life.

Accordingly, with the combined object of encouraging marine commerce and assuring the well-being of seamen, maritime nations uniformly have imposed broad responsibilities for their health and safety upon the owners of ships.[2] In this country these notions were reflected early, and have since been expanded in legislation designed to secure the comfort and health of sea-

[1] *Cf.* Holmes, J., dissenting in Tyson and Brother v. Banton, 273 U. S. 418, 447.

[2] As Mr. Justice Story, then on circuit, observed in Harden v. Gordon, 2 Mason 541, 11 Fed. Cas. No. 6047 (C. C.), at 483, "Seamen are by the peculiarity of their lives liable to sudden sickness from change of climate, exposure to perils, and exhausting labour. They are generally poor and friendless, and acquire habits of gross indulgence, carelessness, and improvidence. If some provision be not made for them in sickness at the expense of the ship, they must often in foreign ports suffer the accumulated evils of disease, and poverty, and sometimes perish from the want of suitable nourishment. . . . If these expenses are a charge upon the ship, the interest of the owner will be immediately connected with that of the seamen. The master will watch over their health with vigilance and fidelity. He will take the best methods, as well to prevent diseases, as to ensure a speedy recovery from them. He will never be tempted to abandon the sick to their forlorn fate; but his duty, combining with the interest of his owner, will lead him to succor their distress, and shed

men aboard ship,[3] hospitalization at home[4] and care abroad.[5] The statutes are uniform in evincing solicitude that the seaman shall have at hand the barest essentials for existence. They do this in two ways. One is by recognizing the shipowner's duty to supply them, the other by providing for care at public expense. The former do not create the duty. That existed long before the statutes were adopted. They merely recognize the preexisting obligation and put specific legal sanctions, generally criminal, behind it. Compare *Harden* v. *Gordon*, 2 Mason 541, 11 Fed. Cas. No. 6047 (C. C.); *The George*, 1 Sumn. 151, 10 Fed. Cas. No. 5329 (C. C.); *The Forest*, 1 Ware 429, 9 Fed. Cas. No. 4936 (D. C.). The provisions for public assistance were not intended to relieve the shipowner of his duty. On the contrary their purpose was to make sure the seaman would have care, if the employer should fail to give it and in the rarer cases to which his obligation does not extend. The legislation therefore gives no ground for making inferences adverse to the seaman or restrictive of his rights. Cf. *Reed* v. *Canfield*, 1 Sumn. 195, 20 Fed. Cas. No. 11,641 (C. C.). Rather it furnishes the strongest basis for regarding them broadly,

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a cheering kindness over the anxious hours of suffering and despondency. Beyond this, is the great public policy of preserving this important class of citizens for the commercial service and maritime defence of the nation. Every act of legislation which secures their healths, increases their comforts, and administers to their infirmities, binds them more strongly to their country; and the parental law, which relieves them in sickness by fastening their interests to the ship, is as wise in policy, as it is just in obligation. Even the merchant himself derives an ultimate benefit from what may seem at first an onerous charge. It encourages seamen to engage in perilous voyages with more promptitude, and at lower wages. It diminishes the temptation to plunderage upon the approach of sickness; and urges the seamen to encounter hazards in the ship's service, from which they might otherwise be disposed to withdraw."

[3] *E.g.*, Act of July 20, 1790, c. 29, § 8, 1 Stat. 134; Act of June 7, 1872, c. 322, § 41, 17 Stat. 270; 46 U. S. C. §§ 666, 667, requiring that ships carry a minimum supply of medicines and antiscorbutics. Act of July 20, 1790, c. 29, § 9, 1 Stat. 135; Act of June 7, 1872, c. 322, § 36, 17 Stat. 269; Act of Dec. 21, 1898, c. 28, § 12, 30 Stat. 758; R. S. 4565; 46 U. S. C. §§ 661, 662, requiring that ships carry sufficient and adequate stores and water for the crew. See also 17 Stat. 277, 46 U. S. C. § 713. Act of June 7, 1872, c. 322, § 42, 17 Stat. 270, R. S. 4572; Act of June 4, 1884, c. 121, § 11, 23 Stat. 56; Act of Dec. 21, 1898, c. 28, § 15, 30 Stat. 759; 46 U. S. C. §§ 669, 670, providing that certain basic clothes and heating facilities be furnished by the shipowner; 46 U. S. C. §§ 672-672(c), 673, prescribing qualifications and quotas for crews, and watch divisions.

[4] Act of July 16, 1798, c. 77, 1 Stat. 605; Act of March 2, 1799, c. 36, 1 Stat. 729; 2 Stat. 192; R. S. 4808-13; 24 U. S. C. §§ 1, 6, 8, 11, 193.

[5] Act of Feb. 28, 1803, c. 9, § 4, 2 Stat. 204; 2 Stat. 651; R. S. 4577; 46 U. S. C. § 678, requiring consuls in the case of sick and destitute seamen abroad to provide for their subsistence and return passage to the United States.

when an issue concerning their scope arises, and particularly when it relates to the general character of relief the legislation was intended to secure.

Among the most pervasive incidents of the responsibility anciently imposed upon a shipowner for the health and security of sailors was liability for the maintenance and cure of seamen becoming ill or injured during the period of their service.[6] In the United States this obligation has been recognized consistently as an implied provision in contracts of marine employment.[7] Created thus with the contract of employment, the liability, unlike that for indemnity or that later created by the Jones Act,[8] in no sense is predicated on the fault or negligence of the shipowner. Whether by traditional standards he is or is not responsible for the injury or sickness, he is liable for the expense of curing it as an incident of the marine employer-employee relationship.[9] So broad is the shipowner's obligation that negligence or acts short of culpable misconduct on the seaman's part will not relieve him of the responsibility. *Peterson* v. *The Chandos*, 4 Fed. 645 (D. C.); see also *The J. F. Card*, 43 Fed. 92 (D. C.); *The Ben Flint*, 1 Abb. (U. S.) 126, 3 Fed. Cas. No. 1299 (D. C.). Conceptions of contributory negligence, the fellow-servant doc-

[6] See, *e. g.*, Laws of Oleron, Articles VI, VII; Laws of Wisbuy, Articles XVIII, XIX; Laws of the Hanse Towns, Articles XXXIX, XLV; Marine Ordinances of Louis XIV, of Marine Contracts, Title Fourth, Articles XI, XII, compiled in 30 Fed. Cas. 1171-1216; *cf.* Harden *v.* Gordon, *supra*.

The Laws of Oleron are typical of the provision for injuries: "If any of the mariners hired by the master of any vessel, go out of the ship without his leave, and get themselves drunk, and thereby there happens contempt to their master, debates, or fighting and quarrelling among themselves, whereby some happen to be wounded: in this case the master shall not be obliged to get them cured, or in any thing to provide for them, but may turn them and their accomplices out of the ship; . . . but if by the master's orders and commands any of the ship's company be in the service of the ship, and thereby happen to be wounded or otherwise hurt, in that case they shall be cured and provided for at the costs and charges of the said ship." Article VI.

[7] Harden *v.* Gordon, 2 Mason 541, 11 Fed. Cas. No. 6047 (C. C.); The Atlantic, Abb. Adm. 451, 2 Fed. Cas. No. 620 (D. C.); Cortes *v.* Baltimore Insular Line, 287 U. S. 367, 371.

[8] *Cf.* The Osceola, 189 U. S. 158; Pacific Steamship Co. *v.* Peterson, 278 U. S. 130; O'Donnell *v.* Great Lakes Dredging Co., No. 320, October Term 1942, decided February 1, 1943; Brown *v.* The Bradish Johnson, 1 Woods 301, 4 Fed. Cas. No. 1992 (C. C.); The A. Heaton, 43 Fed. 592 (C. C.); The Mars, 149 Fed. 729 (C. C. A.).

[9] The City of Alexandria, 17 Fed. 390 (D. C.); The A. Heaton, 43 Fed. 592 (C. C.); The Wensleydale, 41 Fed. 829 (D. C.); Sorenson *v.* Alaska S. S. Co., 247 Fed. 294 (C. C. A.); Peterson *v.* The Chandos, 4 Fed. 645 (D. C.); *cf.* Seely *v.* City of New York, 24 F. 2d 412 (C. C. A.); *cf.* Reed *v.* Canfield, 1 Sumn. 195, 20 Fed. Cas. No. 11,641 (C. C.).

trine, and assumption of risk have no place in the liability or defense against it. Only some wilful misbehavior or deliberate act of indiscretion suffices to deprive the seaman of his protection. *The Ben Flint, supra.* The traditional instances are venereal disease[10] and injuries received as a result of intoxication,[11] though on occasion the latter has been qualified in recognition of a classic predisposition of sailors ashore.[12] Other recent cases however disclose a tendency to expand these traditional exceptions.[13]

Consistently with the basic premises of the liability, it was early suggested that the risks which it covered were not only those arising in the actual performance of the seaman's duties. *Reed* v. *Canfield,* 1 Sumn. 195, 20 Fed. Cas. No. 11,641 (C. C.); *Ringgold* v. *Crocker,* Abb. Adm. 344, 20 Fed. Cas. No. 11,843 (D. C.). Unlike men employed in service on land, the seaman, when he finishes his day's work, is neither relieved of obligations to his employer nor wholly free to dispose of his leisure as he sees fit. Of necessity, during the voyage he must eat, drink, lodge and divert himself within the confines of the ship. In short, during the period of his tenure the vessel is not merely his place of employment; it is the framework of his existence. For that reason among others his employer's responsibility for maintenance and cure extends beyond injuries sustained because of, or while engaged in, activities required by his employment. In this respect it is a broader liability than that imposed by modern workmen's compensation statutes.[14] Appropriately it covers all injuries and ailments incurred without misconduct on the seaman's part amounting to ground for forfeiture, at least while he is on the ship, "subject to the call of duty as a seaman, and earning wages as such." *The Bouker No. 2,* 241 Fed. 831, 833 (C. C. A.), certiorari denied, 245 U. S. 647; *Calmar S. S. Co.* v. *Taylor,* 303 U. S.

[10] Pierce v. Patton, Gilp. 435, 19 Fed. Cas. No. 11,145 (D. C.); The Alector, 263 Fed. 1007 (D. C.); Chandler v. The Annie Buckman, 21 Betts 112, 5 Fed. Cas. No. 2591 a (D. C.); Zambrano v. Moore-McCormick Lines, Inc., 131 F. 2d 537 (C. C. A.); Wytheville, 1936 A. M. C. 1281 (D. C.).

[11] Barlow v. Pan-Atlantic Steamship Corp., 101 F. 2d 697 (C. C. A.); The Berwindglen, 88 F. 2d 125 (C. C. A.); Lortie v. American-Hawaiian Steamship Co., 78 F. 2d 819 (C. C. A.); Oliver v. Calmar S. S. Co., 33 F. Supp. 356 (D. C.).

[12] The Quaker City, 1 F. Supp. 840 (D. C.).

[13] *Cf.* text and note 15 *infra.*

[14] *Compare* Yukes v. Globe Steamship Corp., 107 F. 2d 888 (C. C. A.); but *cf.* States Steamship Co. v. Berglann, 41 F. 2d 456 (C. C. A.), certiorari denied, 282 U. S. 868; Holm v. Cities Service Transportation Co., 60 F. 2d 721 (C. C. A.).

525, 527-8; *Holm* v. *Cities Service Transportation Co.*, 60 F. 2d 721 (C. C. A.); *Highland* v. *The Harriet C. Kerlin*, 41 Fed. 222 (C. C.); *The Quaker City*, 1 F. Supp. 840 (D. C.); compare *Neilson* v. *The Laura*, 2 Sawy. 242, 17 Fed. Cas. No. 10,092 (D. C.); *Callon* v. *Williams*, 2 Lowell 1, 4 Fed. Cas. No. 2324 (D. C.).[15]

When the seaman's duties carry him ashore, the shipowner's obligation is neither terminated nor narrowed.[16] When he leaves the ship contrary to orders, however, the owner's duty is ended.[17] Between these extremes are the instant cases, raising for the first time here the question of the existence and scope of the shipowner's duty when the seaman is injured while on shore leave but without specific chore for the ship. Liability in that circumstance was obscured in the first maritime codes[18] and although early suggested has been recognized only implicitly in lower federal courts.[19] Very recently it has been explicitly denied in several district courts.[20]

We think that the principles governing shipboard injuries apply to the facts presented by these cases. To relieve the shipowner of his obligation in the case of injuries incurred on shore leave would cast upon the seaman hazards encountered only by reason of the voyage. The assumption is hardly sound that the normal uses and purposes of shore leave are "exclusively personal" and

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[15] The recent tendency to confine the scope of the obligation to those shipboard injuries which are caused by the requirements of the seaman's duties [Meyer v. Dollar S. S. Line Co., 49 F. 2d 1002 (C. C. A.); *cf.* Brock v. Standard Oil Co. of N. J., 33 F. Supp. 353 (D. C.);] is consonant neither with the liberality which courts of admiralty traditionally have displayed toward seamen who are their wards nor with the dictates of sound maritime policy. Calmar S. S. Co. v. Taylor, *supra*, at 529.

[16] See *e. g.* Laws of Oleron Art. VI, VII; Laws of Wisbuy Art. XVIII, XIX; Laws of Hanse Towns Art. XXXIX, XLV; see also The Montezuma, 19 F. 2d 355 (C. C. A.); Gomez v. Periera, 42 F. Supp. 328 (D. C.).

[17] Sound reasons of discipline long have impelled this rule. *Cf.*, *e. g.*, Laws of Oleron, Art. VII; Marine Ordinances of Louis XIV, *supra;* Laws of Wisbuy, *supra;* and compare Pierce v. Patton, *supra* note 10.

[18] Thus while the Laws of Oleron and the Marine Ordinances of Louis XIV, *supra*, relieve from liability for injuries incurred while on shore without leave, they say nothing on the question here involved. Similarly, the Laws of Wisbuy, *supra*, are ambiguous on this point. The Laws of the Hanse Towns suggest that any injuries received otherwise than in the ship's service are not within the right to maintenance and cure.

[19] *E. g.*, Reed v. Canfield, *supra* note 9; The Berwindglen, *supra* note 11; *cf.* The J. M. Danziger, 1938 A. M. C. 685 (D. C.).

[20] Smith v. American South African Line, Inc., 37 F. Supp. 262 (D. C.); Wahlgren v. Standard Oil Co. of N. J., 42 F. Supp. 992 (D. C.); Collins v. Dollar Steamship Lines, Inc. Ltd., 23 F. Supp. 395 (D. C.).

have no relation to the vessel's business. Men cannot live for long cooped up aboard ship without substantial impairment of their efficiency, if not also serious danger to discipline. Relaxation beyond the confines of the ship is necessary if the work is to go on, more so that it may move smoothly. No master would take a crew to sea if he could not grant shore leave, and no crew would be taken if it could never obtain it. Even more for the seaman than for the landsman, therefore, "the superfluous is the necessary . . . to make life livable"[21] and to get work done. In short, shore leave is an elemental necessity in the sailing of ships, a part of the business as old as the art, not merely a personal diversion.

The voyage creates not only the need for relaxation ashore, but the necessity that it be satisfied in distant and unfamiliar ports. If in those surroundings the seaman, without disqualifying misconduct, contracts disease or incurs injury, it is because of the voyage, the shipowner's business. That business has separated him from his usual places of association. By adding this separation to the restrictions of living as well as working aboard, it forges dual and unique compulsions for seeking relief wherever it may be found. In sum, it is the ship's business which subjects the seaman to the risks attending hours of relaxation in strange surroundings. Accordingly it is but reasonable that the business extend the same protections against injury from them as it gives for other risks of the employment.

It was from considerations of exactly this character that the liability for maintenance and cure arose. From them likewise, its legal incidents were derived. The shipowner owes the protection regardless of whether he is at fault; the seaman's fault, unless gross, cannot defeat it; unlike the statutory liability of employers on land it is not limited to strictly occupational hazards or to injuries which have an immediate causal connection with an act of labor. An obligation which thus originated and was shaped in response to the needs of seamen for protection from the hazards and peculiarities of marine employment should not be narrowed to exclude from its scope characteristic and essential elements of that work. And, indeed, no decision has been found which so narrows the shipowner's parallel obligation in the case of sickness or disease. Rather the implications of exist-

[21] Holmes, J., dissenting in Tyson and Brother v. Banton, 273 U. S. 418, 447.

ing authority point the other way. Cf. *The Bouker No. 2, supra.*[22] The considerations, including those of public interest adverted to by Mr. Justice Story, which support the liability for illness,[23] or for injuries received aboard ship, likewise sustain it for injuries incurred on shore leave, as were those now in issue. To exclude such injuries from the scope of the liability would ignore its origins and purposes.

There is strong ground therefore for regarding the right to maintenance and cure as covering injuries received without misconduct while on shore leave. Certainly the nature and foundations of the liability require that it be not narrowly confined or whittled down by restrictive and artificial distinctions defeating its broad and beneficial purposes. If leeway is to be given in either direction, all the considerations which brought the liability into being dictate it should be in the sailor's behalf. In this view, the nature and purposes of the liability do not permit distinctions which allow recovery when the seaman becomes ill or is injured while idle aboard, cf. *Calmar Steamship Co.* v. *Taylor,* 303 U. S. 525; *The Bouker No. 2,* 241 Fed. 831 (C. C. A.); *Holm* v. *Cities Service Transportation Co.,* 60 F. 2d 721 (C. C. A.); *The Quaker City,* 1 F. Supp. 840 (D. C.), or when doing some minor errand for the ship ashore, *Gomes* v. *Pereira,* 42 F. Supp. 328 (D. C.), but deny it when he falls from the ladder or gangplank as he leaves the vessel on shore leave, cf. *The President Coolidge,* 23 F. Supp. 575 (D. C.), or is returning from it, *Lilly* v. *United States Lines Co.,* 42 F. Supp. 214 (D. C.). Such refinements cut the heart from a protection to which they are wholly foreign in aim and effect. The sailor departing for or returning from shore leave is, sensibly, no more beyond the broad protection of his right to maintenance and cure than is the seaman quitting the ship on

[22] See also Holmes v. Hutchinson, Gilp. 447, 12 Fed. Cas. No. 6639 (D. C.); The Forest, 1 Ware 429, 9 Fed. Cas. No. 4936 (D. C.); The Nimrod, 1 Ware 1, 18 Fed. Cas. No. 10,267 (D. C.); and see cases cited *supra* note 10.

[23] At the argument it was suggested that a reason which might sustain the imposition of liability for sickness innocently contracted on shore leave, but not for injuries so incurred, would be the difficulty of proving origin ashore. The difficulty undoubtedly would exist in some cases, but hardly in all. No authority has been found which suggests this explanation. Rather, cases of illness, which are within the reason and policy of the liability, are indistinguishable from cases of injury received without misconduct. The risk of incidence is not less in the one case than in the other. The afflicted seaman is made as helpless and dependent by injury as by illness. His resources for meeting the catastrophe and his employer's burden are not greater because he is hurt rather than ill.

being discharged or boarding it on first reporting for duty. Cf. *The Michael Tracy*, 295 Fed. 680 (C. C. A.); *The Scotland*, 42 Fed. 925 (D. C.).

Plaintiffs here were injured while traversing an area between their moored ships and the public streets by an appropriate route. It is true that in No. 454 the area consisted of the extensive premises of the Mexican Petroleum Company, at whose dock the ship was moored. And it is said the shipowner should not be liable because he had no control over the premises. But it was the shipowner's business which required the use of those facilities. And his obligation to care for the seaman's injuries is, as has been shown, in no sense a function of his negligence or fault. While his ability to control conditions aboard ship may be to some extent an element in creating his responsibility, it is only one of many, is not definitive, and by no means determines the occasions on which his obligation arises. Consequently the fact that the shipowner might not be liable to the seaman in damages for the dock owner's negligence, cf. *Todhul* v. *Sudden & Christenson*, 5 F. 2d 462 (C. C. A.), does not relieve him of his duty of maintenance and cure. We can see no significant difference, therefore, between imposing the liability for injuries received in boarding or quitting the ship and enforcing it for injuries incurred on the dock or other premises which must be traversed in going from the vessel to the public streets or returning to it from them. That much at least is within the liability. How far it extends beyond that point we need not now determine. And, in view of the ground on which we rest the decision, it is not necessary to consider the effects of the Shipowners' Liability Convention of 1936,[24] other than to state that it in no way alters the conclusion here reached.

[24] By presidential proclamation the Convention became effective for the United States and its citizens on October 29, 1939 (54 Stat. 1693). Article 2 provides:

1. The shipowner shall be liable in respect of—
   (a) sickness and injury occurring between the date specified in the articles of agreement for reporting for duty and the termination of the engagement;
   (b) death resulting from such sickness or injury.

2. Provided that national laws or regulations may make exceptions in respect of:
   (a) injury incurred otherwise than in the service of the ship;
   (b) injury or sickness due to the wilful act, default or misbehavior of the sick, injured or deceased person;
   (c) sickness or infirmity intentionally concealed when the engagement is entered into.

3. National laws or regulations may provide that the shipowner shall not be liable in respect of sickness, or death directly attributable to sickness, if

The judgment in No. 582 is affirmed; that in No. 454 is reversed and remanded to the District Court for further proceedings not inconsistent with this opinion.

Mr. Justice ROBERTS did not participate in the consideration or decision of this case.

The CHIEF JUSTICE thinks that the judgment in No. 454, *Aguilar* v. *Standard Oil Company of New Jersey*, should be affirmed for the reasons stated in the opinion of the Circuit Court of Appeals below, 130 F. 2d 154. In No. 582, *Waterman Steamship Corporation* v. *Jones*, he concurs in the result on the ground that the recovery was authorized by the Shipowners' Liability Convention, 54 Stat. 1695, which became effective before the date of respondent's injury. He is of opinion that Article 2, Clause 1 of the treaty authorizing the recovery is self-executing, and that the exceptions permitted by Clause 2 are not operative in the absence of Congressional legislation giving them effect. (See letter of Secretary of State to the President, dated June 12, 1939, quoted in H. R. Rep. No. 1328, 76th Cong., 1st Sess., pp. 5-7.)

A true copy.

Test:

Clerk, Supreme Court, U. S.

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at the time of the engagement the person employed refused to be medically examined.

Relevant material on the scope and effect of the Convention may be found in H. R. Rep. No. 1328, 76th Cong., 1st Sess., containing the interpretation by the Secretary of State; Record of Proceedings, Inernational Labor Conference, 21st and 22d Sessions, Geneva, 1936, 249-51; International Labor Conference, Geneva, 1929, The Protection of Seamen in Case of Sickness, 1st Discussion, 28-46; International Labor Conference, Geneva, 1931, The Protection of Seamen in Case of Sickness, 2d Discussion, 29-43, 161-2. See also H. R. 6881, 76th Cong., 1st Sess.; 84 Cong. Rec. 10540; Hearings before Committee on Merchant Marine and Fisheries, House of Representatives, on H. R. 6881, 76th Cong., 1st Sess., *passim*; Hearings before Senate Committee on Commerce on H. R. 6881, 76th Cong., 3d Sess., *passim*.